

interface.<sup>38</sup> We acknowledged VZ-MA's letter in our Reconsideration Order and noted that should CLECs reach agreement with Verizon on electronic access to information in LFACS, the Department would direct VZ-MA to file an amended tariff incorporating this decision in a timely fashion.<sup>39</sup> The Department will act in a similar manner if and when agreement is reached on a pre-order transaction that can accommodate manual loop qualifications, which is discussed below. The Department has attached to our Supplemental Evaluation the summary of Verizon's proposed initiatives made at the most recent Change Management meeting.<sup>40</sup>

If the information sought by the requesting CLEC is not present in the LiveWire database,<sup>41</sup> or if that carrier seeks additional information beyond that provided in this enhanced database, it may request that VZ-MA perform a manual loop qualification, which is VZ-MA's second offered means of obtaining loop qualification information.<sup>42</sup> The information that VZ-

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<sup>38</sup> VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 57, Attach. Q (Lacouture/Ruesterholz Supp. Decl.). In this letter, VZ-MA indicated that it would circulate its proposals at the January 2001 Change Management meeting in New York.

<sup>39</sup> VZ-MA Supplemental Application, Appdx. B, Tab 4C, at 8 (Phase III-A Reconsideration Order).

<sup>40</sup> Appdx. 5 (Summary of Verizon Change Management Proposal, Released 1/31/01).

<sup>41</sup> In our Evaluation, we noted that this database included over 90 percent of VZ-MA's central offices with collocation arrangements in place. D.T.E. Evaluation at 292. In its most recent filing, VZ-MA states that it has populated this database with over 91 percent of the access lines in Massachusetts. VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 30 (Lacouture/Ruesterholz Supp. Decl.).

<sup>42</sup> The third option available to CLECs is to request an engineering query. While we conclude that there is no need to address this option in our Supplemental Evaluation  
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MA gathers and what processes it uses to perform this function have been well documented in VZ-MA's past filings and in its supplemental application; thus, we need not repeat those details here.<sup>43</sup> However, we find that some additional background will be instructive to address a concern raised by some carriers regarding the means used by CLECs to request a manual loop qualification.

Briefly, to make a manual loop qualification request, a CLEC (or VADI if it chose to use this form of loop qualification, which, to date, it has not) would submit a local service request ("LSR") to VZ-MA, using either the web-based Graphical User Interface, the Electronic Data Interchange, or the Common Object Request Broker Architecture interface, indicating in the appropriate field that a manual loop qualification is needed.<sup>44</sup> Pursuant to business rules, VZ-MA has two days to complete a manual loop qualification and one day to return this information to the requesting CLEC via the same interface used by the CLEC to place the LSR. Since, technically speaking, this CLEC request is made through an ordering transaction, and not through a pre-ordering transaction, some CLECs argue that VZ-MA is not meeting either its UNE Remand Order or its § 271 obligations. However, as mentioned

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<sup>42</sup>(...continued)

because no commenter raised concerns about engineering queries in CC Docket No. 00-176, VZ-MA has provided details about this process in other filings. See e.g., VZ-MA Application, Appdx. E (VZ-MA Direct Testimony of Meacham, D.T.E. 98-57-Phase III, at 24-27, Filed 6/15/00).

<sup>43</sup> See e.g., VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶¶ 34-37, Attachs. G, H (Lacouture/Ruesterholz Supp. Decl.).

<sup>44</sup> Id. at ¶ 34, Attach. G.

above, Verizon is working toward a solution that it anticipates will be available later this year to enable CLECs and, presumably, VADI to request, through a pre-ordering transaction, loop qualification information that is unavailable in the database.<sup>45</sup> The Department is confident that this VZ-MA initiative will satisfy commenters' criticism about VZ-MA's current practice of having CLECs submit requests for manual loop qualifications through an ordering and not pre-ordering process. Since, however, the implementation date for the VZ-MA proposals is scheduled for October 2001, it is helpful to discuss the current practical effect on CLECs of making this request in the ordering phase as opposed to pre-ordering.

Regardless of which ordering phase a carrier makes the manual loop qualification request in (i.e., pre-ordering or ordering), to date VZ-MA would still be permitted several days to return that information to the requesting CLEC as per the business rules. In addition, as mentioned above, the Department will soon investigate precisely how long VZ-MA's personnel require to obtain information from LFACS (though, of course, to perform a manual loop qualification, VZ-MA's technicians perform steps beyond checking LFACS).<sup>46</sup> We

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<sup>45</sup> See Appdx. 5. According to Verizon's proposal, the CLEC would first attempt to pre-qualify the loop through the database. If the request is returned as "not qualified" because the information is not contained in the database, the CLEC could then request VZ-MA to create loop qualification information for a particular loop through the so-called "Pre-Order xDSL Loop Qualification - Extended" transaction. VZ-MA would return an electronic response to the CLEC with the loop length or indicate the reasons why the loop is not qualified.

<sup>46</sup> See VZ-MA Application, Appdx. E (VZ-MA Direct Testimony of Meacham, D.T.E. 98-57-Phase III, at 18-24, Filed 6/15/00).

further note that there would be no practical distinction in cost to a CLEC in making this request through one transaction and not the other. Specifically, the Department has denied VZ-MA's proposed loop qualification charges, determining that in a fiber-fed network, CLECs would have no need to qualify loops.<sup>47</sup> Since we disallowed such charges, if a CLEC submits an LSR simply to request a manual loop qualification, it only follows that VZ-MA not be permitted to assess a service order charge for this request. If any further clarification on this point is required by the Department, we will do so in our continuing Phase III proceeding. In sum, we conclude that not only is there no time differential between a CLEC requesting a manual loop qualification in the ordering phase as opposed to making the request in the pre-ordering stage, there is also no cost differential. In Massachusetts, we perceive no negative consequences to a CLEC for placing its request for a manual loop qualification through an LSR. Based upon our record, it appears that the difference is in name only and, thus, we would urge the FCC to accord little, if any, weight to CLEC criticism on this point, should the FCC choose not to consider Verizon's recently proposed pre-order transaction mechanism.

Finally, in its supplemental application, VZ-MA indicates that CLECs, and VADI, currently have the ability to perform bulk loop qualifications, an added functionality that the

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<sup>47</sup> See D.T.E. Evaluation, Appdx. E, at 103-106. See also VZ-MA Supplemental Application, Appdx. B, Tab 4C, at 34-37 (Phase III-A Reconsideration Order) (upholding our earlier ruling denying VZ-MA's proposed loop qualification and conditioning charges).

Department expects will speed broadband deployment in our state.<sup>48</sup> Moreover, VZ-MA states that it will soon increase the information available to CLECs and VADI for bulk qualifications by adding loop lengths that correspond to the working telephone numbers.<sup>49</sup> In our comments last year, we noted that one carrier argued that the information contained in VZ-MA's loop qualification database was inaccurate.<sup>50</sup> As mentioned above, in response to such claims, the Department directed VZ-MA and the carrier, DBC, to exchange relevant documentation in an attempt to reconcile the data. The results of the discussions and analyses of the two carriers, along with the Department's findings, are summarized in the Simon affidavit and in VZ-MA's supplemental application.<sup>51</sup>

B. Pricing

1. Standard of Review

In its Bell Atlantic New York Order,<sup>52</sup> the FCC stated that:

In reviewing state pricing decisions in the context of section 271 applications,

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<sup>48</sup> VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 33 (Lacouture/Ruesterholz Supp. Decl.).

<sup>49</sup> Id.

<sup>50</sup> D.T.E. Evaluation at 292-293, 295-296.

<sup>51</sup> See Appdx. 1 at ¶¶ 5-11; VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶¶ 41-44, Attach. M (Lacouture/Ruesterholz Supp. Decl.).

<sup>52</sup> Application by Bell Atlantic-New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, FCC 99-404 (1999) ("Bell Atlantic New York Order").

we will not reject an application because isolated factual findings by a state commission might be different from what we might have found if we were arbitrating the matter under section 252(e)(5). Rather, we will reject the application only if basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.<sup>53</sup>

More recently in its SWBT Kansas and Oklahoma Order, the FCC noted that, in determining whether UNE rates are within the range that reasonable application of TELRIC principles would produce, it may, in appropriate circumstances, consider rates from other states that it has already found to be based on TELRIC principles.<sup>54</sup> The FCC cited the following factors in deciding whether to consider a comparison of rates from other states: (a) whether the states are adjoining; (b) whether the states have similar, if not identical, rate structures; and (c) whether the FCC has already found rates in one of the states to be reasonable.<sup>55</sup> In that Order, the FCC also stated that

[I]ncumbent LECs are not required, pursuant to the requirements of section 271, to guarantee competitors a certain profit margin. In order to comply with checklist item 2 of section 271, incumbent LECs must provide UNEs at rates and terms that are just, reasonable, and nondiscriminatory, and that allow the incumbent LEC to recover a reasonable profit.<sup>56</sup>

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<sup>53</sup> Id. at ¶ 244.

<sup>54</sup> SWBT Kansas and Oklahoma Order at ¶¶ 81-82.

<sup>55</sup> Id. at ¶ 82.

<sup>56</sup> Id. at ¶ 65.

## 2. Discussion and Conclusions

In its Evaluation, the Department stated that “VZ-MA is in compliance with the terms of checklist item 2 in terms of pricing for network elements. VZ-MA’s network element prices in Massachusetts unquestionably are based on the TELRIC of providing those elements.”<sup>57</sup> For all of the reasons stated in our Evaluation and in our Reply Comments, many of which were echoed by the FCC in its SWBT Kansas and Oklahoma Order, we reaffirm our conclusion that VZ-MA’s UNE rates are in compliance with checklist requirements.

In terms of pricing of network elements, VZ-MA supplemented its application by providing “new” information related to a change in prices for local switching, which was approved by the Department on October 13, 2000. In our Evaluation, the Department found that the new switching rates “are virtually identical to those same costs for New York, which the FCC already found to be reasonable and in compliance with TELRIC in the Bell Atlantic New York Order.”<sup>58</sup>

The timing of the change in switching prices was questioned on what has been labeled “procedural grounds” by a number of parties, but VZ-MA correctly notes in its supplemental application that “procedural concerns about [VZ-MA’s] new switching rates are now moot because the revised rates are in place at the time of this application’s filing.”<sup>59</sup> Also, the

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<sup>57</sup> D.T.E. Evaluation at 213.

<sup>58</sup> Id. at 223.

<sup>59</sup> VZ-MA Supplemental Brief at 38 (footnote omitted).

question about whether it is appropriate for the FCC to rely on the previously-determined reasonableness of one state's UNE rates when evaluating another state's rates has now been addressed by the FCC in its most recent § 271 Order. As noted above, the FCC stated that it may, in appropriate circumstances, consider rates from other states that it has already found to be based on TELRIC principles.<sup>60</sup> In its consideration of whether VZ-MA's new switching rates are reasonable, the FCC should take into account the following facts: (a) Massachusetts and New York are adjoining states; (b) in Massachusetts and New York, Verizon has similar rate structures for local switching; and (c) the FCC already has found that Verizon's local switching rates in New York are reasonable. These facts lead to the inescapable conclusion that VZ-MA's rates for local switching are reasonable and are in within a range that application of TELRIC principles would produce.

Another issue that has now been definitively addressed by the FCC is whether it is appropriate to judge the reasonableness of UNE rates by comparing them to expected retail revenues in order to ensure that there is a sufficient margin between wholesale costs and retail revenues to make entry profitable for certain carriers. In our Evaluation, the Department did not concede that there is a problem with margins in Massachusetts, but stated that "such an analysis is not relevant to determining compliance with the checklist."<sup>61</sup> The Department's

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<sup>60</sup> SWBT Kansas and Oklahoma Order at ¶¶ 81-82.

<sup>61</sup> D.T.E. Evaluation at 220 (footnote omitted); see also, D.T.E. Reply Comments at 47 n.149.

conclusion that a margin analysis is irrelevant to checklist compliance was assailed by several commenters, including AT&T Communications of New England, Inc.; WorldCom Inc., and the Massachusetts Attorney General. The FCC, however, in its SWBT Kansas and Oklahoma Order found that:

Such an argument [i.e., that UNE rates are so high that no CLEC could afford to use the UNE-platform to offer local residential service on a statewide basis] is irrelevant. The Act requires that we review whether the rates are cost-based, not whether a competitor can make a profit by entering the market. Were we to focus on profitability, we would have to consider the level of a state's retail rates, something which is within the state's jurisdictional authority, not the Commission's.<sup>62</sup>

Given this precedent, there is simply no need to discuss margins in the instant proceeding any further.

Finally, as VZ-MA noted, the Department recently opened an investigation into VZ-MA's rates for UNEs and its wholesale discount for resale.<sup>63</sup> This investigation is the scheduled five-year review of VZ-MA's UNE and resale rates.<sup>64</sup> The Department intends to have new rates in effect by December of this year.

### III. CHECKLIST ITEM 4 - UNBUNDLED LOCAL LOOPS

As a general matter, in evaluating a BOC's overall performance, the FCC will look for "patterns of systematic performance disparities that have resulted in competitive harm or

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<sup>62</sup> SWBT Kansas and Oklahoma Order at ¶ 92 (footnote omitted).

<sup>63</sup> See VZ-MA Supplemental Application, Appdx. B, Tab 4D (D.T.E. Order Opening Investigation, D.T.E. 01-20, Issued January 12, 2001).

<sup>64</sup> See D.T.E. Reply Comments at 50-51.

otherwise denied competing carriers a meaningful opportunity to compete.”<sup>65</sup> Specifically, the FCC will examine a BOC’s performance in the following areas as they apply to different types of unbundled local loops: percent firm order commitments (“FOCs”) returned within “x” hours,<sup>66</sup> average installation interval, missed installation due dates, percentage of trouble reports within 30 days of installation, mean time to restore, trouble report rate, and repeat trouble report rate.<sup>67</sup>

A. xDSL-Capable Loops

1. Provisioning

a. Standard of Review

In its recently released SWBT Kansas and Oklahoma Order, the FCC noted that it continues to rely on the performance metrics it identified in the Bell Atlantic New York Order and the SWBT Texas Order (i.e., average installation intervals and missed installation due dates) for the appropriate standard in reviewing a BOC’s xDSL provisioning performance.<sup>68</sup>

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<sup>65</sup> SWBT Kansas and Oklahoma Order at ¶ 179.

<sup>66</sup> See D.T.E. Evaluation at 295 n. 936, 297 for a discussion of VZ-MA’s performance captured by this metric, OR-1-04.

<sup>67</sup> SWBT Kansas and Oklahoma Order at ¶ 181 n.516.

<sup>68</sup> Id. at ¶ 185. See D.T.E. Evaluation at 256, 260-261 for the definitions of these two metrics.

b. Discussion and Conclusions

i. Average Installation Intervals

VZ-MA supplemented its application by providing additional information for the following two related performance measurements: average completion interval (PR-2-01 and PR-2-02) and percentage of xDSL orders (1-5 lines) completed within six days (PR-3-10). Properly corrected by VZ-MA (and verified by PwC) to account for weekends, holidays and orders received after 5:00 p.m., VZ-MA's performance data from September through November 2000 demonstrate that VZ-MA provisions xDSL loops to CLECs in approximately the same amount of time that it provisions xDSL loops for its own retail service.<sup>69</sup> As noted by the FCC in its SWBT Kansas and Oklahoma Order, SWBT missed the applicable benchmark (five days to provision a stand-alone xDSL loop not requiring conditioning) in both states by more than a day. Indeed, SWBT missed the benchmark in Kansas by almost two days, or 25 percent longer than the benchmark provides.<sup>70</sup> Although SWBT was not meeting the agreed-upon level of service, as reported by the relevant performance measurement, the FCC stated

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<sup>69</sup> From September through November 2000, the average completed interval for CLECs requiring a dispatch (PR-2-02) was: 9.7, 7.75, and 7.33 days (for a weighted average of 8.32 days). During the same period, the average completed interval for VZ-MA was: 11.44, 7.63, and 5.17 days (for a weighted average of 8.48 days). According to VZ-MA, its September results were affected by the work stoppage, an assertion we find persuasive based upon VZ-MA's performance in subsequent months. VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶¶ 74-75, Attach. W (Lacouture/Ruesterholz Supp. Decl.).

<sup>70</sup> SWBT Kansas and Oklahoma Order at ¶ 187.

that it was persuaded by SWBT's apparent improvement as the volumes of orders increased.<sup>71</sup>

VZ-MA's installation interval performance for CLECs has also improved, decreasing more than two days from September to November 2000.

As we noted in our comments filed last year, the performance measurements reported by VZ-MA are developed and refined in a collaborative manner, under the auspices of the NYPSC, and it should surprise no one that some factors outside of VZ-MA's control that might skew VZ-MA's performance would not be apparent when those metrics were first proposed and approved.<sup>72</sup> In recognition of several flaws in one metric (PR-3-10), which became apparent after VZ-MA began reporting it, carriers in the New York collaborative have agreed to calculate this metric in the following revised manner: (a) exclude orders where the CLEC failed to pre-qualify the loop; (b) exclude orders that should have been "X-coded" (*i.e.*, the CLEC should have indicated on the order that it was requesting a longer interval than the standard offered interval); (c) exclude loops that are missed due to facility delays; and (d) set a benchmark of 95 percent rather than using second residential POTS lines as the retail analogue.<sup>73</sup> We note that these modifications corroborate our findings set forth in our earlier comments (*e.g.*, concluding that VZ-MA's performance was affected by such matters as CLECs requesting longer due dates but failing to code their orders with an "X," CLECs

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<sup>71</sup> Id.

<sup>72</sup> D.T.E. Reply Comments at 87-88.

<sup>73</sup> VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶¶ 77-80 (Lacouture/Ruesterholz Supp. Decl.).

requesting manual loop qualifications whereas VZ-MA's retail representatives did not).<sup>74</sup>

Although VZ-MA was required to begin reporting the modified metric in January 2001 on a going-forward basis, for purposes of its supplemental application, it had Lexecon recalculate its PR-3-10 performance in Massachusetts during September through November 2000 using the new business rules.<sup>75</sup> In addition and at the request of VZ-MA, Lexecon removed orders that were affected by the strike and compared the results for CLECs to the results for VZ-MA's retail ADSL orders.<sup>76</sup> Using these exclusions and modifications, Lexecon determined that, averaged over three months, VZ-MA's performance for CLECs was superior than its performance for its retail ADSL service (83.50 percent to 75.74 percent).<sup>77</sup> Finally,

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<sup>74</sup> D.T.E. Evaluation at 299-300, 305-306; D.T.E. Reply Comments at 75.

<sup>75</sup> VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 81 (Lacouture/Ruesterholz Supp. Decl.). As mentioned earlier, like PwC, Lexecon corrected this metric to account for VZ-MA's inadvertent calculation of orders placed on weekends and holidays, and orders received after 5:00 p.m., in its September through November 2000 data. See VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 3, at ¶ 12 (Gertner/Bamberger Supp. Decl.).

<sup>76</sup> VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 81 (Lacouture/Ruesterholz Supp. Decl.). According to Lexecon, it treats an order as being "strike affected" if the order was initiated between August 6 and August 22, 2000 or if VZ-MA promised completion between August 6 and August 25, 2000, or if the missed appointment code equals "CC" (i.e., "Company Crisis"). VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 3, at ¶ 13 n.6 (Gertner/Bamberger Supp. Decl.). At the request of the Department, VZ-MA provided Lexecon's analysis of PR-3-10 that includes the strike affected data. See Appdx. 2.

<sup>77</sup> During the months of September through November 2000, the percent of 1-5 xDSL lines that VZ-MA provisioned for CLECs in six days (PR-3-10) was: 89.12%; 80.00%; and 82.24%. During the same period, VZ-MA's performance for its retail  
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Lexecon found that the overwhelming majority of CLEC orders not completed within six days were completed within seven days (i.e., approximately 95 percent).<sup>78</sup>

Lexecon's study also establishes a conclusion emphasized by the Department in our filings last year: VZ-MA provisions xDSL loops to CLECs when CLECs request them.<sup>79</sup> Specifically, Lexecon determined that most CLECs request due dates beyond the standard six-day offer. In fact, during the three-month period reviewed by Lexecon, more than 80 percent of the orders requested due dates in excess of six days (and, thus, under the revised business rules, would be excluded from the metric).<sup>80</sup> Lexecon analyzed VZ-MA's responsiveness in assigning the CLEC-requested due date and determined that when CLECs requested a provisioning interval greater than six days (which, as noted above, appears to be most of the time), VZ-MA gave CLECs their requested due dates over 99 percent of the time.<sup>81</sup>

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<sup>77</sup>(...continued)

ADSL service was: 69.71%; 75.69%; and 89.91%. VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 3, at ¶¶ 11-16, Attach. C (Gertner/Bamberger Supp. Decl.).

<sup>78</sup> Id. at ¶ 17.

<sup>79</sup> D.T.E. Evaluation at 306 ("When VZ-MA obliges a CLEC's request for a provisioning interval of greater than six days, it shows up in the [pre-January 2001] performance measures as violating the standard, but this does not equal discrimination. Rather, VZ-MA is performing as a wholesale provider should. It gives CLEC customers the service they request."); D.T.E. Reply Comments at 74.

<sup>80</sup> VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 3, at ¶ 18, Attach. B (Gertner/Bamberger Supp. Decl.).

<sup>81</sup> Id. We note that VZ-MA reported this level of service, i.e., approximately 99 percent,  
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ii. Percent Missed Installation Due Dates

In our earlier Evaluation, we noted that although VZ-MA missed a higher percentage of installation appointments for CLECs than for its retail service, its performance was improving and the difference (approximately 1.5 percent in the more recent months) did not deny an efficient competitor a meaningful opportunity to compete.<sup>82</sup> VZ-MA's recent data support this conclusion: the difference has decreased from 1.5 percent from our earlier Evaluation to 0.5 percent in October, and in November, VZ-MA missed approximately 2 percent more appointments for its own retail customers than for CLEC customers (PR-4-04). In addition, according to VZ-MA and verified by PwC, the September data not affected by the strike also show parity.<sup>83</sup>

iii. Provisioning Quality

Validating several of the reporting difficulties cited by VZ-MA in its first application, and which we discussed in our Evaluation, the NYPSC approved the following modifications to PR-6-01, percent installation troubles reported within 30 days (the so-called "I-Code" rate): exclude trouble reports filed by CLECs that do not participate in cooperative testing from the numerator, and use as the retail comparison the I-Code rate on VZ-MA's retail POTS lines

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<sup>81</sup>(...continued)

in its § 271 application filed last year. See D.T.E. Evaluation at 306.

<sup>82</sup> D.T.E. Evaluation at 307.

<sup>83</sup> VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 72, Attachs. T, U (Lacouture/Ruesterholz Supp. Decl.); VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 2, at ¶¶ 76-84 (Sapienza/Mulcahy Supp. Decl.).

instead of xDSL lines.<sup>84</sup> VZ-MA had Lexecon recalculate VZ-MA's data for this metric using the approved exclusions for the months of September through November 2000. In VZ-MA's earlier application, the I-Code rate for CLECs ranged from over 6 percent to almost 8.5 percent, whereas VZ-MA's I-Code rate for its retail service hovered around 3 percent.<sup>85</sup> In its supplemental application, Lexecon determined that VZ-MA's I-Code rate for its retail POTS service was around 3 percent. However, under the revised business rules, the I-Code rate for CLECs decreased to an average of 4.81 percent over a three-month period.<sup>86</sup>

In the SWBT Kansas and Oklahoma Order, the FCC noted with approval that SWBT generally met its six percent benchmark and that its performance is steadily improving.<sup>87</sup> Similarly, we find that VZ-MA's performance continues to improve<sup>88</sup> and that the information contained in VZ-MA's supplemental application only affirms our earlier conclusion that VZ-MA provides CLECs an installation quality sufficient to afford them a meaningful opportunity

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<sup>84</sup> D.T.E. Evaluation at 311, 313; D.T.E. Reply Comments at 79-84; VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶¶ 92-93 (Lacouture/Ruesterholz Supp. Decl.). While there may be some concern that certain CLEC orders are removed only from the numerator, we would note that these revisions were made in a collaborative setting and the carriers agreed to these stated revisions.

<sup>85</sup> D.T.E. Evaluation at 311 n.972.

<sup>86</sup> VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 3, at ¶¶ 4-6, Attach. A (Gertner/Bamberger Supp. Decl.).

<sup>87</sup> SWBT Kansas and Oklahoma Order at ¶ 191.

<sup>88</sup> In the months covered by our Evaluation, April through July 2000, CLECs made the following percentage of trouble reports within 30 days of a loop's provisioning: 6.58%, 7.94%, 6.20%, and 8.46%.

to compete. We agree with VZ-MA that there remains a question whether this metric, PR-6-01, accurately captures VZ-MA's ability to provision a quality xDSL loop, even after the revisions to the metric.<sup>89</sup> Indeed, VZ-MA's review of its maintenance logs together with the high percentage of trouble reports closed without any trouble found show that at least some CLECs are unable or unwilling to perform basic acceptance testing.<sup>90</sup>

In an effort to decrease the CLECs' I-Code rates that are attributable to inadequate acceptance testing, since it filed its § 271 application last September, VZ-MA has taken the following steps to assist CLECs: (a) on-site visits to CLEC testing centers by VZ-MA's managers to view CLEC testing processes and recommend appropriate improvements; (b) provide detailed information about CLECs' I-Codes to enable the CLECs to evaluate and correct their acceptance testing weaknesses; (c) "sync testing" trials with CLECs to determine whether particular loops can support xDSL signals; (d) on-going effort to provide VZ-MA technicians with remote access to a CLEC's acceptance testing equipment via a voice response unit; and (e) tagging xDSL loops at the network interface device and the cross-connect box with a special services marker.<sup>91</sup> The Department finds that these initiatives are consistent with the high level of cooperation evidenced by VZ-MA in our § 271 proceeding and only reinforce VZ-MA's commitment to provide its competitors with excellent service.

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<sup>89</sup> VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶¶ 90, 96-100 (Lacouture/Ruesterholz Supp. Decl.).

<sup>90</sup> Id. at ¶¶ 97-100, 105, Attachs. Y, BB.

<sup>91</sup> Id. at ¶¶ 106-110.

2. Maintenance and Repair

a. Standard of Review

The performance measurements reviewed by the FCC to determine whether a BOC provides maintenance and repair of unbundled xDSL-capable loops in a manner that affords an efficient competitor a meaningful opportunity to compete continue to be those identified in the FCC's Bell Atlantic New York Order and SWBT Texas Order, and include the mean time to repair ("MTTR"), the overall trouble report rate,<sup>92</sup> and the repeat trouble report rate.<sup>93</sup>

b. Discussion and Conclusions

As we noted in our Evaluation and Reply Comments, factors outside of VZ-MA's control, including CLECs rejecting offered weekend appointments, negatively affect several of VZ-MA's maintenance and repair metrics, including the MTTR metric (MR-4-01).<sup>94</sup> In our

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<sup>92</sup> In its supplemental application, VZ-MA reports that the weighted average total trouble report rate for CLECs from September through November 2000, as verified by PwC, is approximately three percent and that this rate for VZ-MA's retail xDSL service during the same period of time was approximately two percent. Id. at ¶¶ 87-88, Attachs. C, X. We conclude that this slight disparity is competitively insignificant and, absent some CLEC evidence of competitive harm, we would urge the FCC to conclude that this level of performance by VZ-MA does not deny an efficient competitor a meaningful opportunity to compete.

<sup>93</sup> SWBT Kansas and Oklahoma Order at ¶ 193. During the months covered by our initial Evaluation, April through July 2000, CLECs filed fewer repeat trouble reports for xDSL-capable loops than did VZ-MA's retail service. See D.T.E. Evaluation at 314. VZ-MA's more current data (September through November 2000) demonstrate that this level of service continues to be true; thus, we find that it is unnecessary to comment further on this metric (MR-5-01).

<sup>94</sup> D.T.E. Evaluation at 314-322; D.T.E. Reply Comments at 86-91; Letter from James  
(continued...)

Evaluation, we reported that VZ-MA's data show that it requires more time to repair CLEC xDSL-capable loops than it does to repair its own retail loops.<sup>95</sup> However, VZ-MA argued persuasively in our proceeding that CLEC behavior skewed certain performance measurements and we concluded that an evaluation of VZ-MA's true performance with respect to the maintenance and repair of CLEC xDSL-capable loops required more than simply looking at VZ-MA's numbers for MR-4-04, for example.<sup>96</sup> The totality of the evidence contained in our record convincingly established that VZ-MA maintains and repairs CLEC xDSL loops in substantially the same time and manner as it does for its retail customers.

Last year, VZ-MA presented evidence before the Department demonstrating that CLECs reject offered weekend repair appointments.<sup>97</sup> In its supplemental application, VZ-MA produces additional evidence, confirmed by PwC, that documents this CLEC practice.<sup>98</sup> According to VZ-MA, if it took into account CLEC-rejected weekend appointments (i.e., by appropriately reducing the time to close a trouble ticket), the difference between VZ-MA's

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<sup>94</sup>(...continued)

Connelly, Chairman, D.T.E. to Chairman and Commissioners, Federal Communications Commission, CC Docket No. 00-176, at 2-3 (filed December 1, 2000).

<sup>95</sup> D.T.E. Evaluation at 314 n.982.

<sup>96</sup> Id. at 319-322; D.T.E. Reply Comments at 86-91.

<sup>97</sup> D.T.E. Evaluation at 315; D.T.E. Reply Comments at 89.

<sup>98</sup> VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶¶ 121-122, Attachs. GG, HH (Lacouture/Ruesterholz Supp. Decl.); VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 2, at ¶¶ 108-119 (Sapienza/Mulcahy Supp. Decl.).

performance for itself and its performance for CLECs for the MTTR metric from September through November 2000 would have decreased by almost 50 percent.<sup>99</sup> These data demonstrate that CLECs reject approximately 50 percent of offered weekend appointments, adding approximately 4.35 hours to VZ-MA's average repair interval for CLECs.<sup>100</sup> VZ-MA argues that there is some justification for stopping the clock, as is done by SWBT for Texas, when a CLEC rejects a weekend appointment.<sup>101</sup> We support such a modification but, in the interim, would urge the FCC to afford substantial weight to the findings of this verified study about the effect of CLEC behavior on the MTTR metric. Finally, absent any modification to this metric, VZ-MA's data demonstrate a solid trend of improvement in VZ-MA's performance since its last application -- a trend that affirms our earlier conclusions.

B. Line Sharing

1. Standard of Review

In its SWBT Kansas and Oklahoma Order, the FCC noted that it intends to review the following performance measurements in its evaluation of a BOC's line sharing performance: missed installation due dates, average installation intervals, trouble reports within 30 days of

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<sup>99</sup> VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 122, Attach. HH (Lacouture/Ruesterholz Supp. Decl.).

<sup>100</sup> Id.

<sup>101</sup> Id.

installation, MTTR, trouble report rates, and repeat trouble report rates.<sup>102</sup> In addition, the BOC should provide evidence that its central offices are operationally ready to handle commercial volumes of line sharing, and that it provides nondiscriminatory access to the OSS functions associated with line sharing.<sup>103</sup> Finally, if a BOC relies upon commercial data from another state, it should provide evidence that the OSS and provisioning processes are identical.<sup>104</sup>

In addition to providing a detailed description of what OSS and processes VADI uses to order line-shared loops capable of supporting xDSL,<sup>105</sup> VZ-MA's supplemental application contains an independent evaluation verifying the information contained in the Dowell supplemental declaration, and documenting the comparability of the OSS and processes used to order line-shared loops in both Massachusetts and New York.<sup>106</sup> As we noted above, although we have not tested the validity of the findings contained in Sapienza/Mulcahy supplemental declaration, we can find nothing in our record that would contradict the statements made either in the PwC (*i.e.*, Sapienza/Mulcahy) supplemental declaration or the Dowell supplemental

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<sup>102</sup> SWBT Kansas and Oklahoma Order at ¶ 215.

<sup>103</sup> See D.T.E. Supplemental Evaluation at Section II.A, above, for a discussion about VZ-MA's nondiscriminatory access to its OSS.

<sup>104</sup> SWBT Kansas and Oklahoma Order at ¶ 215.

<sup>105</sup> VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 4 (Dowell Supp. Decl.).

<sup>106</sup> VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 2, at ¶¶ 26-73 (Sapienza/Mulcahy Supp. Decl.).

declaration. Thus, we recommend that the FCC afford substantial weight to VZ-MA's assertion that it offers nondiscriminatory service to its OSS functions necessary to order and provide line sharing, and that such systems and processes in Massachusetts are comparable to, indeed the very same as, those found in New York. However, if a commenter produces sufficient evidence tending, in the FCC's view, to refute PwC's findings, the Department would, at the FCC's request, endeavor to reconcile any discrepancy in a timely manner.

## 2. Discussion and Conclusions

Although not required by the NYPSC to begin reporting disaggregated line sharing data until 2001, VZ-MA reviewed its xDSL data from September through November 2000 and included line sharing-specific performance measurements in its supplemental application.<sup>107</sup> Because of the small number of line sharing orders in Massachusetts, VZ-MA also included these data for New York. According to PwC, it replicated 99 line sharing measurements using VZ-MA's October 2000 data, the results of which are included in the Sapienza/Mulcahy supplemental declaration.<sup>108</sup>

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<sup>107</sup> VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 145, Attach. JJ (Lacouture/Ruesterholz Supp. Decl.).

<sup>108</sup> VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 2, at ¶¶ 19-25, Table 1 (Sapienza/Mulcahy Supp. Decl.) (finding that for the majority of the measurements, PwC's numbers matched VZ-MA's exactly and that for the remaining measurements, the number of observations was identical and the reported performance was within one percent).

a. Provisioning

VZ-MA's line sharing data for the month of November, the first month in which VADI was operational, show that VZ-MA provisions line-shared loops, not requiring a dispatch, for CLECs faster than it does for VADI (6.40 days to 7.53 days).<sup>109</sup> While there is no basis for comparison during the months of September or October, VZ-MA's data for this metric, PR-2-01, demonstrate that it required slightly more than six days to provision line-shared loops to CLECs (6.47 days in September; 6.29 days in October).<sup>110</sup>

In addition, although VADI did not submit any I-Code reports in the month of November (i.e., reports captured in the PR-6-01 metric), the CLEC I-Code rate was only 1 percent, and, in the two previous months, CLECs did not file any trouble reports within 30 days of installation.<sup>111</sup> Finally, in November, VZ-MA did not miss any installation appointments for CLECs when a dispatch was not required (in the same month, it missed one-tenth of one percent of its installation appointments for VADI). This level of performance for

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<sup>109</sup> VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 159, Attach. NN (Lacouture/Ruesterholz Supp. Decl.).

<sup>110</sup> Id. As noted by VZ-MA in its supplemental application, the Department directed VZ-MA to reduce the provisioning interval for line-shared loops from six business days to five. VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 164, citing Phase III Order (Lacouture/Ruesterholz Supp. Decl.). The Department expects VZ-MA to comply with this shorter interval, which went into effect on November 27, 2000. We also would point out that this interval will be reduced further to four business days in a few months. Phase III Order at 51-52.

<sup>111</sup> VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 167, Attach. SS (Lacouture/Ruesterholz Supp. Decl.).

CLECs is also true for September and October. However, in its supplemental filing, VZ-MA states that this metric, PR-4-05, may not have included those instances where VZ-MA's technician performed the central office work typically required for xDSL loops but failed to confirm that a splitter, a piece of equipment that is unnecessary for an unbundled xDSL loop, was functioning on the line.<sup>112</sup> VZ-MA indicates that it has since remedied this situation, but that its data from September through November may have been affected.

Since we cannot conclusively determine whether these reported data were unintentionally skewed in VZ-MA's favor, we will not consider this measurement as evidence of parity in VZ-MA's line sharing performance. However, based on VZ-MA's other reported provisioning metrics (e.g., average interval completed, percent completed within six days, installation quality), as replicated by PwC, we conclude that reliance on VZ-MA's missed installation appointment performance is unnecessary to find that VZ-MA is provisioning line-shared loops in a nondiscriminatory manner.<sup>113</sup>

b. Maintenance and Repair

According to VZ-MA's data, the total trouble report rate for VADI was 0.09 percent in November, and 1.44 percent for CLECs (a weighted average over a three-month period).<sup>114</sup> Although VZ-MA's data show a slight lack of parity, we note that VZ-MA's performance for

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<sup>112</sup> Id. at ¶ 156.

<sup>113</sup> See id. at Attach. JJ.

<sup>114</sup> Id. at ¶ 166, Attach. RR.

CLECs is far superior than that provided by SWBT to CLECs in Texas (i.e., 18.4 percent in September, and 11 percent in October).<sup>115</sup> We agree with VZ-MA that this slight difference (1.35 percent) is de minimis and would not deny an efficient competitor a meaningful opportunity to compete in Massachusetts.

In November, the only month for which VZ-MA provided such data, VZ-MA repaired CLEC line-shared loops in just over three hours. In contrast, VZ-MA required over 25 hours to repair VADI's loops. While the number of observations is small, VZ-MA clearly met the performance standard (parity) for this metric (MR-4-03).<sup>116</sup> Finally, VZ-MA reported the percentage of repeat trouble reports (MR-5-01) for both CLECs and VADI during November 2000. Again, VZ-MA's performance for CLECs exceeded its performance for VADI. CLECs did not submit any repeat trouble reports for the month of November whereas VADI filed repeat trouble reports for over 25 percent of its lines.<sup>117</sup> As we found with VZ-MA's provisioning performance, we conclude that VZ-MA is meeting the maintenance and repair line sharing standards set forth in the FCC's § 271 Orders.

c. Operational Readiness

In its supplemental application, VZ-MA describes the steps it has taken both before and after implementation of the FCC's Line Sharing Order. VZ-MA's statements are consistent

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<sup>115</sup> SWBT Kansas and Oklahoma Order at ¶ 218 n.630.

<sup>116</sup> VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at Attach. JJ (Lacouture/Ruesterholz Supp. Decl.).

<sup>117</sup> Id.